

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy, on its own motion as to the propriety of the Local Service Provider Freeze terms and conditions set forth in the following tariff: M.D.T.E. No. 10, Part A, Section 5, Original of Page 1.1, filed with the Department on November 1, 1999 by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts

DTE 99-105

MOTION BY AT&T FOR RECONSIDERATION OF MAY 31, 2000

ORDER IN D.T.E. 99-105

Pursuant to 220 CMR 1.11(10), AT&T Communications of New England, Inc. ("AT&T") hereby moves for reconsideration of the order issued by the Department of Telecommunications and Energy ("Department" or "DTE") on May 31, 2000 ("Order") on the grounds that previously unknown facts have come to light after the Department issued the Order that would have had a significant impact on the Department's decision. The facts which give rise to this motion are set forth in more detail below.

Argument

I. STANDARD OF REVIEW

Although the Department's rules establish a party's right to seek reconsideration of a Department order, they do not set forth the standard by which the Department should evaluate a motion for reconsideration. See, 220 CMR 1.11(10). The Department has developed such standards over the years on a case-by-case basis. There are general standards for determining when the Department will grant a motion for reconsideration. See, e.g., Bay State Gas Company, D.P.U. 92-111-A (1993) at 2 ("A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered."). See also, Commonwealth Electric Company, D.P.U. 91-3B-1 at 5-6. ("Reconsideration is appropriate when there are previously unknown or undisclosed facts that would have a significant impact on the Department's decision or if the Department's decision is arguably the result of mistake or inadvertence."). There are also guidelines for when a motion for reconsideration may be denied. A motion for reconsideration may be denied if it attempts to reargue issues considered and decided in the main case. Bay State Gas Company at 2.

II. THE DEPARTMENT SHOULD RECONSIDER THE ORDER IN LIGHT OF THE CONCERN EXPRESSED BY THE REGIONAL CONSUMER AFFAIRS DIRECTORS REGARDING CONSUMER AFFECTING COMPLEXITY IN THE CARRIER CHANGE PROCESS.

While the Department rejected both AT&T's and WorldCom, Inc.'s ("WorldCom") call for the creation of a third party administrator ("TPA") to avoid abuses of the preferred carrier change process, the fact is that the preferred carrier change process has

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now become such a significant regional concern that the New England Conference of Public Utility Commissions ("NECPUC") has scheduled a day-long conference in Boston to discuss the issue. This conference provides evidence which directly undermines the Department's finding that it could "not find an adequate basis in the record to mandate the use of a TPA for LSPF." Order at 17. The NECPUC workshop on July 14, 2000, will no doubt provide the Department with a basis for creating a TPA to resolve globally the issues and abuses surrounding preferred carrier changes, involving both billing and carrier freezes. In light of this new evidence relating to customer confusion in the PIC change process and its affect on New England's public utilities commissions that only came to light after the hearings and the parties had briefed the issues, the Department should reconsider its Order.

A. The NECPUC Workshop Raises Troubling Issues Concerning The Preferred Carrier Change Process.

On June 6, 2000, NECPUC invited the regional telecommunications service providers to a workshop to discuss "the increasing number of complaints concerning billing problems related to changes of preferred carrier" which have been reported to the state consumer affairs offices. See NECPUC Invitation at 1, a true and accurate copy of which is attached hereto as Exhibit A. The recent increase in the number of such complaints is a direct result of the inherent difficulties in coordinating billing practices when an end-user changes from one carrier to another. While the impetus for convening the conference relates to billing problems, the issue is largely the same as the issue litigated in this docket: Massachusetts consumers must endure the excessively complex carrier change process which is open to abuse by the self-interested parties that administer the system.

The NECPUC provides many reasons for calling the workshop. First, it notes that "[a]ttempts to resolve these cases [involving carrier changes] ... have been frustrated by the complexity of the carrier change process." NECPUC Invitation at 1. This is a result of the fact that "[c]onsumers exercising their right to choose a new long distance carrier put in motion a potentially complex series of transactions involving the consumer, the new carrier, the old carrier, the local carrier, and perhaps one or more underlying carriers." NECPUC Workshop Description at 1, a true and accurate copy of which is attached hereto as Exhibit B (emphasis added). Second, NECPUC states that "[c]onsumers want this process to be transparent ... and [to] seamlessly transition at a known point in time to the new carrier...." Id. Third, while parties involved in carrier changes "need to work with each other for a seamless transition to occur, the expectations placed on each party sometimes seem to be poorly defined and inconsistently followed." Id. Finally, NECPUC seeks to eliminate the perceived complexity and simplify carrier changes so that "[c]ustomers need only make one telephone call to implement a preferred carrier change or to choose to not have a preferred toll carrier." Id. The NECPUC conference therefore aims to address such issues as (a) what information the old and new carriers should share, (b) how the old carrier should be notified of the preferred carrier change, (c) what the timing of notification should be, (d) what the consumer should be told about the effective date of the change, (e) whether dates for leaving the old carrier and beginning with the new are the same, and (f) what potential for delay there might be. Id.

B. The Problems To Be Addressed At the NECPUC Workshop Also Support The Need For A Third Party To Administer The Preferred Carrier Change Process.

The problems to be addressed at the NECPUC workshop are essentially the same issues as those raised in this docket concerning the administration of the LSPF. Indeed, the problems that gave rise to the NECPUC workshop will likely pale in comparison to the problem of effectuating a PIC change when there is a freeze on an account with respect to the local service provider. Nevertheless, the problems upon which NECPUC is focusing add force to AT&T's and WorldCom's arguments that the PIC change process should be as simple as possible and that a TPA is necessary to administer the carrier change process.

Like a change in preferred carrier in the long distance market, effectuating a

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change in local service provider will put in motion a complex series of transactions between multiple parties that are difficult for consumers to follow. Indeed, such a process, especially if it includes lifting a freeze, will make changing interexchange carriers look easy. On the initial sales call, the customer provides all of its relevant information, including name, address, telephone number, and the features they currently have and would like to preserve. The customer then sets up a time to actually port the number or number and line from his or her former carrier to the new one. The customer then takes part in a third party verification ("TPV") call, whereupon the LEC can process the order. The CLEC then contacts the customer to confirm that the switch time is convenient for them, sets up a time to port the line over, coordinates with the former LEC to confirm that no service interruption takes place, and once the carrier change is completed, calls to confirm that the customer has dial tone and that the requested features are working properly. In short, this is a highly complex process that consumers have a hard time following and often causes frustration for the consumer. A TPA would thus satisfy NECPUC's interest in obtaining some type of coordination between fiercely competing carriers (by eliminating the need for it), with the added benefit of eliminating the anti-competitive effects arising from one of the competitors who has the dominant control over the PIC change process.

Moreover, contrary to the desires of government officials responsible for the New England region's consumer affairs in telecommunications, the process for changing local service providers is not transparent. Due to the complexities of the carrier change process, it can involve rejections of change requests which frustrate the expectations and desires of end users to change carriers. As both AT&T and WorldCom have shown, the process becomes even more time-confusing and frustrating to customers when a freeze is in place. Customers often do not remember or do not believe that they have a LSPF on their line. When a change order is placed and then rejected because the customer did not know or did not inform the CLEC that a freeze was on the line, the CLEC must call the customer back, which is invasive and requires the customer to go through further unforeseen steps to change his service. Because it is not at all clear that the method ordered by the Department will in fact provide CLECs with equal access to customer freeze information (it relies on an unsupported promise from Bell Atlantic), it remains entirely possible that this sort of obfuscated and labyrinthine process will continue to bedevil consumers who want to change carriers.

The NECPUC workshop announced on June 6 evidences a real concern on the part of the New England region's consumer affairs officials that the current PIC change process in the long distance market is already too complex to be easily understood and navigated by an end-user. The Department should take into account such evidence and reconsider its decision to extend to the local service market the same complexities by adding a local service provider freeze that is administered by Bell Atlantic.

Conclusion

Just as billing issues arise as a result of the complex carrier change process, so too do the same issues arise during the administration of LSPF. Consumers are caught in the crossfire of competition and are subject to confusion at least and potential abuse at worst in a system that should be seamless and hassle-free. Allowing a LSPF adds to the complexity of the PIC change process. If LSPF is allowed to go into effect, it makes plain sense for a TPA to administer the entire carrier change process, including the process relating to billing and service freezes. Given the fact that issues surrounding carrier changes have become not just a local but a regional concern, and given the new information that has come to light and the information that will also come to light at the conference on July 14, 2000, the Department should reconsider its Order allowing a LSPF and denying the establishment of a TPA to administer carrier changes in the Commonwealth.

For the foregoing reasons, AT&T requests that the Department grant this motion for reconsideration. Upon the granting of this motion, AT&T requests the following relief:

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1. establish a joint Department-Industry commission to investigate the process by which a third administrator could be established to administer all preferred carrier changes in the Commonwealth;
2. revise its May 31, 2000 order in this docket to reflect the same;
3. delay implementation of LSPF until such time as a third party administrator may be put in place, or in the alternative, until NECPUC recommends how to resolve the issues to be addressed at its July 14, 2000 conference.

Respectfully submitted,

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Dated: June 20, 2000.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on June 20, 2000.

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